

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

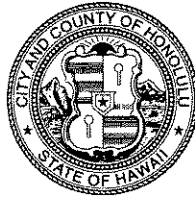
530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813  
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2006 AUG 15 A 11:38

CITY COUNCIL  
HONOLULU, HAWAII

MUFI HANNEMANN  
MAYOR



CARRIE K.S. OKINAGA  
CORPORATION COUNSEL

DONNA M. WOO  
FIRST DEPUTY CORPORATION COUNSEL

August 14, 2006

The Honorable Donovan M. Dela Cruz  
Chair  
City Council  
Honolulu Hale  
Honolulu, Hawaii 96813

Dear Council Chair Dela Cruz:

RE: Ability to Conduct Business Without a Quorum

We enclose for your information a recent letter from the Office of Information Practices ("OIP") dated July 24, 2006, addressed to Ms. Joan Manke of the Neighborhood Commission Office confirming that in the absence of a quorum, under the Sunshine Law, a board cannot discuss, deliberate or decide any matter constituting board business. The letter of July 24, 2006, is part of a sequence of OIP correspondence that commenced with an OIP letter dated September 15, 2005, to Kailua Neighborhood Board Vice Chair Lawrence Bartley, advising that the Board cannot continue discussing, deliberating or deciding any business if the number of board members present at any time during the meeting drops to less than a quorum. To clarify this point with OIP, Deputy Corporation Counsel Jennifer D. Waihee of our office, acting as attorney for the Neighborhood Commission Office, issued a letter to OIP dated October 25, 2005, referencing the earlier OIP letter dated September 15, 2005, both of which are enclosed, restating this point for clarification, specifically enumerating our understanding that:

1. In the absence of a quorum a board may not discuss, deliberate or decide any business. Less than a quorum of members may not hold a meeting and if at any point during a meeting the board loses a quorum, the meeting must end.
2. The board may not continue to take oral testimony if the board lacks a quorum.

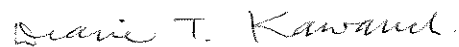
The Honorable Donovan M. Dela Cruz  
Page 2  
August 14, 2006

The OIP letter of July 24, 2006, to Ms. Manke confirms the accuracy of the statements in the October 25, 2005, letter of Deputy Corporation Counsel Jennifer D. Waihee.

We bring this OIP correspondence to your attention and intend to share with you future correspondence from OIP that comes to our attention to ensure the Council's knowledge and familiarity with the Sunshine Law as mostly recently articulated by OIP to our City agencies.


If you should have any questions regarding this matter, please do not hesitate to contact the undersigned at extension 5778.

Very truly yours,



DIANE T. KAWAUCH  
Deputy Corporation Counsel

APPROVED:



CARRIE K. S. OKINAGA  
Corporation Counsel

DTK:ct

Encs.

CCL-NOQUORUM.DTK



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NEIGHBORHOOD COMM  
& C HONOLULU

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LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LIEUTENANT GOVERNOR

STATE OF HAWAII  
OFFICE OF THE LIEUTENANT GOVERNOR  
OFFICE OF INFORMATION PRACTICES

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Telephone: (808) 586-1400 FAX: (808) 586-1412

E-MAIL: oip@hawaii.gov  
www.hawaii.gov/oip

LESLIE H. KONDO  
DIRECTOR

July 24, 2006

VIA FACSIMILE NO. 527-6760

Ms. Joan Manke  
Neighborhood Commission Office  
530 S. King Street, #400  
Honolulu, Hawaii 96813

Re: Ability to Conduct Business Without a Quorum  
S RFO-G 06-32

Dear Ms. Manke:

This letter confirms the oral guidance provided to you in response to your correspondence to us dated June 22, 2006.

Where a board does not have a sufficient number of members present at a meeting to constitute a quorum, you asked whether the board members who are present may "listen to" and/or "discuss without action" any report made by HPD or the Fire Department, including presentations on projects, etc." You also requested that we confirm certain oral advice previously conveyed to deputy corporation counsel Jennifer D. Waihee.

For the reasons that we discussed, we interpret the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes, to generally preclude board members from collectively considering "board business," i.e., matters that are on the board's agenda or reasonably expected to be on the board's agenda in the foreseeable future, outside of properly noticed meeting. Assuming no applicable permitted interaction or other exception, in our opinion, less than a quorum of a board may not collectively "listen to" or "discuss without action" matters that are "board business."

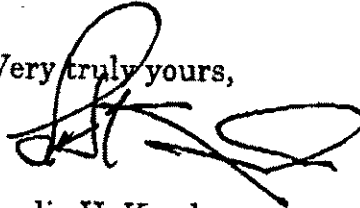
Ms. Joan Manke  
July 24, 2006  
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For your information, we are considering a relatively similar issue involving board members' ability to participate in site inspections and presentations under the Sunshine Law. That opinion may cause us to revisit our above position. We expect to issue an opinion or guidance memorandum on that issue in the near future.

Lastly, Ms. Waihee's letter dated October 25, 2005 accurately memorializes our guidance to her. With respect to numbered paragraph three and the questions posed in the following paragraph, we are in the process of issuing an opinion to Council Chair Donovan Dela Cruz that will address those issues in greater detail.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

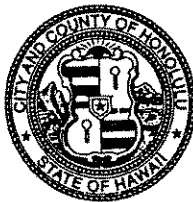
A handwritten signature in black ink, appearing to be 'L. Kondo', written over the closing 'Very truly yours,'.

Leslie H. Kondo  
Director

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

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MUFI HANNEMANN  
MAYOR



CARRIE K.S. OKINAGA  
CORPORATION COUNSEL

DONNA M. WOO  
FIRST DEPUTY CORPORATION COUNSEL

October 25, 2005

VIA FAX AND MAIL

Mr. Leslie H. Kondo  
Director  
Office of Information Practices  
No. 1 Capitol District Building  
250 South Hotel Street, Suite 107  
Honolulu, Hawaii 96813

Dear Mr. Kondo:

Re: Adjournment of Meetings

This letter is to confirm our understanding of the Office of Information Practices' ("OIP") position regarding the effect an adjournment of a meeting prior to completion of its agenda has on the presentations of oral testimony on agenda items not yet heard.

Based on the letter dated September 15, 2005, from OIP to Mr. Lawrence R. Bartley, a copy of which is enclosed hereto, and the subsequent conversation between you and the undersigned regarding this issue, we understand OIP's position to be as follows:

1. A "meeting," as defined in Section 92(3) of the Hawaii Revised Statutes, requires a quorum of the board to be present at all times. A board, without quorum present, may not discuss, deliberate or decide any business absent a permitted interaction or some

Mr. Leslie H. Kondo

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October 25, 2005

other applicable exception. Less than a quorum of a board may not hold a meeting. If at any point during an open meeting the board loses quorum, the meeting effectively ends.

2. If a meeting ends or fails to take place for lack of quorum, the board may not continue to take oral testimony on the remaining agenda items.

3. If a board purposefully adjourns prior to the completion of the agenda (and either defers or postpones the remaining agenda items), the board may not take public testimony relating to the remaining agenda items until the next properly scheduled and noticed open meeting.

Please verify whether this is OIP's position, or, if not, what the OIP's specific position is regarding these issues. Also, could you provide OIP's position on how a board should proceed if it defers a particular agenda item, but continues the meeting and retains quorum? Since a quorum is still present, would the board have to listen to public testimony on the deferred item or could it choose to defer the public testimony on that item as well, until the next meeting?

Please do not hesitate to contact the undersigned at 523-4852 if you have any further questions or need any further information. We appreciate and look forward to your prompt response.

Very truly yours,



JENNIFER D. WAIHEE

Deputy Corporation Counsel

JDW:gg

Enc.



LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LIEUTENANT GOVERNOR

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LESLIE H. KONDO  
DIRECTOR

September 15, 2005

VIA E-MAIL

Mr. Lawrence R. Bartley,  
Vice Chair  
Kailua Neighborhood Board #31

Re: Adjournment of Meetings

Dear Mr. Bartley:

Thank you for your letter dated September 13, 2005.

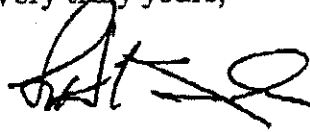
The manner in which a board adjourns its meeting is not dictated by the Sunshine Law, part I of chapter 92, HRS. Notwithstanding the Neighborhood Plan, however, the board cannot adjourn its meeting before allowing every interested person the opportunity to present oral testimony relating to an item on the board's agenda. Haw. Rev. Stat. § 92-3 (1993).

Moreover, contrary to section 4-8.3 of the Neighborhood Plan, as quoted in your letter, if the number of board members present at any time during the meeting is less than the number of members necessary to constitute a quorum, the board cannot continue discussing, deliberating or deciding any business. The term "meeting" requires a quorum of the board to be present. See Haw. Rev. Stat. § 92-2(3) (1993). In other words, once the number of board members present is less than the number of members necessary to constitute a quorum, there cannot be a "meeting." It would be contrary to and in violation of the Sunshine Law for board members to discuss, deliberate or decide any business outside of a meeting absent a permitted interaction or some other applicable exception.

Mr. Bartley  
September 15, 2005  
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Assuming that your quotations of the Neighborhood Plan are accurate, we believe that the Neighborhood Plan should be revised to be consistent with the statute. By copy of this letter to Ms. Baybee Hufana-Ablan, we are advising her of our opinion with respect to the portions of the Neighborhood Plan that you quoted.

Very truly yours,



Leslie H. Kondo  
Director

cc: Ms. Baybee Hufana-Ablan (via facsimile 527-5760)  
Ms. Kathy Bryant-Hunter (via e-mail)  
Jennifer D. Waihee, Esq. (via facsimile 523-4583)